

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHELLE RASCOE and RASCOE COURTS, INC.,	:	CIVIL ACTION NO. 1:15-CV-994
	:	
	:	(Chief Judge Conner)
Plaintiffs	:	
	:	
v.	:	
	:	
SUSQUEHANNA TOWNSHIP, NEIL CODY, in his individual capacity only, and GEORGE DREES, in his individual and official capacity,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 10th day of February, 2017, upon consideration of the report (Doc. 37) of Magistrate Judge Joseph F. Saporito, Jr., recommending the court grant the motion (Doc. 29) to dismiss of defendants Susquehanna Township and George Drees (“Susquehanna defendants”) on timeliness grounds, that the court *sua sponte* dismiss the amended complaint (Doc. 20) against codefendant Neil Cody (“Cody”) who is similarly situated to the Susquehanna defendants but failed to raise the defense, and that such dismissal be with prejudice as any effort to amend the complaint would be futile, and the court noting that plaintiffs filed an objection (Doc. 38) to the report, see FED. R. CIV. P. 72(b), and, following a *de novo* review of the contested portions of the report, see Behar v. Pa. Dep’t of Transp., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing 28 U.S.C. § 636(b)(1)(C); Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989)), and applying a clear error standard of review to the uncontested portions, see Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999),

the court finding Judge Saporito's analysis to be thorough, well-reasoned, and fully supported by the record, and the court disagreeing with the report only to the limited extent that the court concludes plaintiffs should be given one final opportunity to amend their complaint to state facts in support of their equitable tolling argument, see Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002), it is hereby ORDERED that:

1. The report (Doc. 37) of Magistrate Judge Saporito is ADOPTED.
2. The Susquehanna defendants' motion (Doc. 29) to dismiss is GRANTED to the extent plaintiffs' amended complaint (Doc. 20) is subject to dismissal on timeliness grounds.
3. Plaintiffs' amended complaint (Doc. 20) is DISMISSED without prejudice.
4. Cody's motion (Doc. 32) to dismiss is DENIED as moot.
5. Plaintiffs are granted leave to file a second amended complaint within thirty (30) days of the date of this order, consistent with the report (Doc. 37) of Magistrate Judge Saporito and this order.
6. Any amended pleading filed pursuant to paragraph 5 shall be filed to the same docket number as the instant action, shall be entitled "Second Amended Complaint," and shall be complete in all respects. It shall be a new pleading which stands by itself as an adequate complaint under the Federal Rules of Civil Procedure, without reference to the pleading (Doc. 20) hereinabove dismissed.
7. In the absence of a timely-filed second amended complaint, the Clerk of Court shall CLOSE this case.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania